

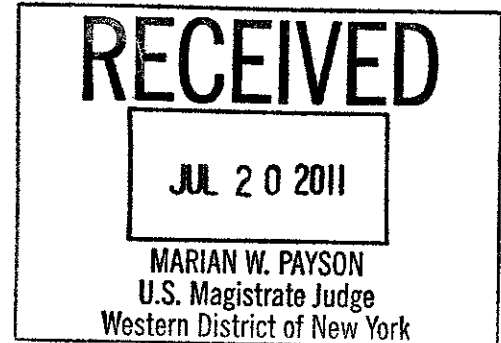
**Thomas & Solomon LLP**  
THE EMPLOYMENT ATTORNEYS

July 15, 2011

VIA FACSIMILE & U.S. MAIL

Honorable Marian W. Payson  
United States District Court  
Western District of New York  
2120 U.S. Courthouse  
Rochester, NY 14614

Re: Patrick Tracy v. NVR, Inc.  
Civil Action No: 04-CV-6541 DGL



Dear Judge Payson:

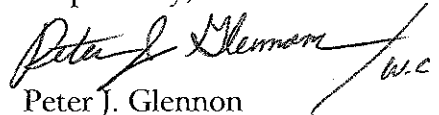
As the Court is aware, plaintiffs were permitted to depose Ms. McCutchen pursuant to Your Honor's July 1, 2010 Order (Docket Number "Dkt. No." 489) and Judge Larimer's subsequent affirmance of that Order (Dkt. No. 554). However, on June 21, 2011, defendant requested "clarification" from this Court regarding whether a deposition of Ms. McCutchen was actually permitted. Plaintiffs responded that same day via letter to the Court explaining their position that this Court explicitly ruled that plaintiffs were permitted to depose Ms. McCutchen.

Since that time, the parties reached a mutually agreeable date of July 28, 2011 to conduct Ms. McCutchen's deposition in Washington, D.C.. However, defendant and Ms. McCutchen stated that the date is contingent upon first receiving from Your Honor a response to defendant's June 21, 2011 letter. Therefore, because preparation for the July 28, 2011 deposition, including travel, need to be confirmed soon, plaintiffs believe that it would be prudent to seek to reschedule the deposition without prejudice should a response not be issued by July 21, 2011.

Plaintiffs remain confident that a deposition is permitted and very much look forward to completing the deposition on July 28, 2011 so that discovery may conclude as soon as possible.

Plaintiffs are available to discuss this issue should the Court desire.

Respectfully,

  
Peter J. Glennon

cc: Barry Miller, Esq. (via email)  
Joseph P. Harkins, Esq. (via email)

*A deposition of Ms. McCutchen  
is permitted pursuant to this  
Court's July 1, 2010 Order.*

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*So ordered  
Marian W. Payson  
USMJ  
7/20/11*